

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Assess and Revise  
the New Regulatory Framework for Pacific Bell  
and Verizon California Incorporated.

Rulemaking 01-09-001  
(Filed September 6, 2001)

Order Instituting Investigation on the  
Commission's Own Motion to Assess and Revise  
the New Regulatory Framework for Pacific Bell  
and Verizon California Incorporated.

Investigation 01-09-002  
(Filed September 6, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART AND  
DENYING IN PART PACIFIC BELL'S MOTION TO STRIKE THE PHASE 2A  
TESTIMONY FILED BY THE OVERLAND CONSULTING GROUP**

This ruling grants in part and denies in part Pacific Bell's (Pacific's) motion to strike the testimony filed by the Overland Consulting Group (Overland).

**Background**

Pursuant to the assigned Commissioner's ruling issued on April 24, 2002, the purpose of Phase 2A is to consider the following matters set forth in Overland's audit report<sup>1</sup>:

---

<sup>1</sup> Overland was hired by the Commission's Telecommunications Division to conduct an audit of Pacific Bell pursuant to Pub. Util. Code § 314.5 and Decision (D.) 94-06-011, D.96-05-036, D.98-10-019, and D.98-10-026.

- Pensions as addressed in the Chapter 7 of the Overland audit report, except Sections VI, VII, and VIII.
- Postretirement Benefits Other than Pensions (PBOPs) as addressed in Chapter 7 of the audit report, except Sections VI, VII, and VIII.
- Depreciation Reserve Deficiency (DRD) as addressed in Chapter 8 of the audit report, except Sections III(C), III(D), and III(E).
- Income Tax Normalization associated with Pensions, PBOPs, DRD, and the Universal Service Fund as addressed in the Chapter 9 of the audit report, except for (i) Sections IV through VII, and (ii) items listed in Table 9-5 other than Pensions, PBOPs, and DRD.
- Whether the above issues lead to sharable earnings.
- Allegations that Pacific impeded the audit to the extent the allegations are raised in the previously identified parts of the audit report.

On May 21, 2002, Pacific Bell filed a motion to strike all of Overland's Phase 2A testimony on the grounds that Overland is not a party to this proceeding, and, therefore, cannot submit testimony in this proceeding. Alternatively, Pacific moves to strike the following portions of the testimony of Overland witnesses Robert F. Welchlin and Gary C. Harpster on the grounds that it is outside the scope of Phase 2A and/or irrelevant:

- Welchlin opening testimony at 7:25-35, 8:1-34, and 9:1-20. Pacific argues that this testimony impermissibly addresses Pacific "impeding the audit" by discussing Pacific's responses generally, rather than as specifically referenced in the chapters that are the subject of Phase 2A.
- Welchlin opening testimony at 9:33-37, 10:1-37, 11:1-37, and 12:1-4. Pacific argues that this testimony impermissibly addresses audit findings, conclusions, and recommendations that fall outside the scope of Phase 2A, such as matters pertaining to financial and operational reporting, monitoring, affiliate transactions, and non-regulated transactions.

- Welchlin reply testimony at 2:26-32, 3:1-23, 4:3-5, 4:8-20, and 5:4-6. Pacific argues that the testimony is neither responsive to any opening testimony nor relevant to Phase 2A issues.
- Harpster opening testimony at 41:14-35, 42:1-39, 43:1-40, 44:1-41, and 45:1-36, 46:22-36, 47:1-2. Pacific argues that this testimony impermissibly relies on Federal Communications Commission (FCC) rules regarding DRD that have not been adopted by the Commission and which were not in effect until after the audit years 1997, 1998, and 1999.

There was no response to Pacific's motion.

## **Discussion**

Pacific moves to strike all of Overland's Phase 2A testimony on the grounds that Overland is not a party in this proceeding. Although Overland is not a party, it does have special status in this proceeding. Specifically, Overland was hired by the Commission's Telecommunications Division to conduct an audit of Pacific as required by Pub. Util. Code § 314.5 and several Commission decisions. The primary purpose of Phase 2A is to consider those parts of the Overland audit report identified previously in this ruling. Overland's testimony advances that purpose by presenting those parts of the audit report, as supplemented, that are the subject of Phase 2A. Therefore, to ensure that the Commission has an adequate record in this proceeding, Pacific's motion to strike all of Overland's Phase 2A testimony is denied.

Pacific moves to strike portions of Welchlin's opening testimony that provide general information related to allegations that Pacific impeded Overland's audit of Pacific (e.g., how long it took Pacific to respond to Overland's first set of data requests and the average number of days it took Pacific to respond to Overland's data requests). The testimony that Pacific seeks to strike

provides relevant background information.<sup>2</sup> Accordingly, Pacific's motion to strike these portions of Overland's testimony is denied.

Pacific moves to strike portions of Welchlin's opening testimony on pages 9 through 12 on the grounds that it is outside the scope of Phase 2A. Much of Welchlin's testimony on these pages addresses affiliate transactions, non-regulated transactions, and monitoring competition, technology, and service quality. These matters are outside the scope of Phase 2A and, therefore, will be stricken. The remaining testimony on pages 9 through 12 is directly related to Phase 2A issues, provides useful background information, or is so intermingled with Phase 2A issues than it cannot, as a practical matter, be stricken (e.g., the total amount of ORA's audit adjustments). Therefore, Pacific's motion to strike other parts of pages 9 through 12 of Welchlin's opening testimony is denied. Parties are cautioned, however, that the testimony on pages 9-12 that is not stricken may be used only to the extent it is relevant to Phase 2A issues.

Pacific moves to strike selected portions of Welchlin's reply testimony on the grounds that it is neither responsive to any opening testimony nor relevant to Phase 2A. After reviewing the Pacific's opening testimony and Overland's reply testimony, the assigned ALJ finds that the reply testimony that Pacific seeks to strike is reasonably responsive to Pacific's opening testimony, and is relevant to Phase 2A issues to the same extent the opening testimony to which it responds is relevant to Phase 2A issues. Accordingly, Pacific's motion to strike these portions of Welchlin's reply testimony is denied.

---

<sup>2</sup> The testimony of Pacific's witness Yvette Hogue also provides background information regarding Pacific's efforts to cooperate with the auditors.

Finally, Pacific moves to strike portions of Harpster's opening testimony on the grounds that it relies on FCC rules that (1) were enacted after the audit period, and (2) have not been adopted by the Commission. Pacific's motion is fundamentally an argument about the weight that should be accorded Harpster's testimony, which is not in of itself sufficient reason to strike the testimony. Accordingly, Pacific's motion to strike Harpster's opening testimony is denied.

Therefore, **IT IS RULED** that:

1. The following parts of the Opening Testimony of Robert F. Welchlin are hereby stricken: 10: 1-11, 10:27-37, 11: 1-37, and 12: 1-4. Pacific Bell's motion to strike is denied in all other respects.

2. Overland shall file and serve a revised copy of the Opening Testimony of Robert F. Welchlin that conforms to this ruling no later than May 28, 2002.

Dated May 24, 2002, at San Francisco, California.

/s/ TIMOTHY KENNEY

---

Timothy Kenney  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Granting in Part and Denying in Part Pacific Bell's Motion to Strike the Phase 2A Testimony of Overland Consulting Group on all parties of record in this proceeding or their attorneys of record.

Dated May 24, 2002, at San Francisco, California.

/s/ KRIS KELLER

Kris Keller

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the

R.01-09-001, I.01-09-002 TIM/k47

Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.